

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN DOE,¹

Plaintiff,

V.

UNIVERSITY ACCOUNTING SERVICE, LLC,

Defendant.

Case No.: 09-CV-01563-BAS-JLB

ORDER:

**(1) DENYING IN PART AND
GRANTING IN PART PLAINTIFF'S
EX PARTE MOTIONS TO SEAL
RECORDS (ECF Nos. 11, 12, 13, 14);
AND**

**(2) DENYING PLAINTIFF'S
MOTION FOR JUDICIAL NOTICE
(ECF No. 16)**

Before the Court are five sets of motions filed by Plaintiff: (1) motion to seal the case records or redact Plaintiff's name (ECF No. 12); (2) application to seal the *ex parte* motion (ECF No. 11); (3) application to seal supplemental exhibits in support of the *ex parte* motion (ECF No. 13); (4) motion for judicial notice (ECF No. 16); and (5) application to seal motion for judicial notice and notice of change of address (ECF No. 14).² Plaintiff represents that he is a participant of California's Safe at Home Program and asks this Court

¹ The Court replaces Plaintiff's name in the caption with John Doe.

² Plaintiff filed all of the filings on an *ex parte* basis.

1 to seal the entire judicial record or, in the alternative, to redact his personal information
 2 and replace his name with the pseudonym “John Doe.” (ECF No. 12.) Because Plaintiff
 3 has not met the high burden of establishing compelling reasons to seal the entire record,
 4 the Court denies that request. However, the Court grants Plaintiff’s request to redact his
 5 name from the record and replace his name on all pleadings with “John Doe,” in line with
 6 the aims of the California Safe at Home Program. Additionally, the Court grants the
 7 requests to seal Plaintiff’s motion and supporting documents (ECF Nos. 11–14), because
 8 the supporting documents contain protected information. Finally, the Court denies as moot
 9 Plaintiff’s request for judicial notice. (ECF No. 16.)

10 **I. BACKGROUND**

11 Plaintiff brought the original action on August 17, 2009, against University
 12 Accounting Service LLC, for alleged violation of the Fair Debt Collection Practices Act,
 13 15 U.S.C. § 1692, and the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code
 14 § 1788, along with other claims. (Compl., ECF No. 1.) The case was closed two months
 15 later, after the parties filed a joint motion to dismiss the action. (Order, ECF No. 9.)

16 Plaintiff filed the present motions in 2021 and 2022, based on his status as a
 17 participant in California’s Safe at Home Program (the “Safe at Home Program”), which is
 18 a state initiative that aims to keep a crime victim’s address confidential. *See* Cal. Code
 19 Civ. Proc. § 367.3; Cal. Gov. Code § 6205.

20 Plaintiff has provided proof of his acceptance into the Safe at Home Program and
 21 submits a declaration that explains his reason for participating in the program. (Pl.’s Decl.,
 22 ECF No. 12 at 22.) Plaintiff was subpoenaed in 2010 as a witness in a criminal case. (*Id.*
 23 ¶ 6; Ex. FF.) According to Plaintiff’s declaration, on the day of the crime, he heard screams
 24 for help coming from the building across from his residence. (*Id.* ¶ 6.) On his way to the
 25 building, he flagged down a passing police car, and entered the building through a fire
 26 escape door together with the police officer. (*Id.*) Plaintiff found himself in a crime scene,
 27 where a male suspect was approaching another person covered in blood. (*Id.*) The police
 28 officer arrested the male suspect for murder. (*Id.*) On his video device, Plaintiff recorded

1 the male suspect stating he killed the victim. (*Id.*) Plaintiff has received numerous death
 2 threats since that incident, which he believes are due to his cooperation in the investigation
 3 and videotaping of the male suspect's statements. (*Id.* ¶ 7.) These threats include text
 4 messages Plaintiff received from an unknown number, featuring images of headless men.
 5 (*Id.* ¶ 8; Ex. GG.) Plaintiff also provides evidence that an unknown man in a trench coat
 6 attempted to enter his home. (*Id.* ¶ 9; Ex. HH.)

7 **II. LEGAL STANDARD**

8 “[T]he courts of this country recognize a general right to inspect and copy public
 9 records and documents, including judicial records and documents.” *Nixon v. Warner*
 10 *Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record is one
 11 ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.”
 12 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing *Foltz*
 13 *v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). “The presumption
 14 of access is ‘based on the need for federal courts, although independent—indeed,
 15 particularly because they are independent—to have a measure of accountability and for the
 16 public to have confidence in the administration of justice.’” *Ctr. for Auto Safety v. Chrysler*
 17 *Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (quoting *United States v. Amodeo*, 71 F.3d
 18 1044, 1048 (2d Cir. 1995)).

19 A party seeking to seal a judicial record bears the burden of overcoming the strong
 20 presumption of access. *Foltz*, 331 F.3d at 1135. The showing required to meet this burden
 21 depends upon whether the documents to be sealed relate to a motion that is “more than
 22 tangentially related to the merits of the case.” *Ctr. for Auto Safety*, 809 F.3d at 1101. When
 23 the underlying motion is more than tangentially related to the merits, the “compelling
 24 reasons” standard applies. *Id.* at 1096–98. When the underlying motion does not surpass
 25 the tangential relevance threshold, the lesser, “good cause” standard applies. *Id.*; see *Pintos*
 26 *v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (holding that the “good cause”
 27 standard imposes a lower burden than the “compelling reasons” standard). Under either
 28 standard, “an order sealing the documents must be narrowly drawn to seal only those

1 portions of the record that, upon a balancing of the relevant interests, ought to be sealed.”
 2 *Acad. of Motion Picture Arts & Scis. v. GoDaddy.com, Inc.*, No. CV 10-03738-AB (CWX),
 3 2015 WL 12698301, at *1 (C.D. Cal. Jan. 22, 2015) (collecting cases).

4 Under this Court’s Standing Order, the parties seeking a sealing order must provide
 5 the Court with “(1) a specific description of particular documents or categories of
 6 documents they need to protect; and (2) declarations showing a compelling reason or good
 7 cause to protect those documents from disclosure.” Hon. Cynthia Bashant’s Standing
 8 Order for Civil Cases (“Standing Order”) § 5. “Even where a public right of access exists,
 9 such access may be denied by the Court in order to protect sensitive personal or confidential
 10 information.” *Id.* “[T]he documents to be filed under seal will be limited by the Court to
 11 only those documents, or portions thereof, necessary to protect such sensitive information.”

12 *Id.*

13 In addition, Federal Rule of Civil Procedure 10(a) states that “the title of the
 14 complaint must name all the parties” in a given action. A plaintiff’s use of a fictitious name
 15 may “run[] afoul of the public’s common law right of access to judicial proceedings.” *Does
 16 I through XIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). However,
 17 the Ninth Circuit allows parties to proceed anonymously “in special circumstances when
 18 the party’s need for anonymity outweighs prejudice to the opposing party and the public’s
 19 interest in knowing the party’s identity.” *Id.* at 1068.

20 III. ANALYSIS

21 A. Federal Law Applies to this Case

22 Plaintiff asks the Court to apply California law instead of federal law to the issues
 23 presented here. The Court declines to do so. Plaintiff cites a case to argue that the “court
 24 considers state law in mixed federal/state claims.” *Maldonado v. Sec’y of Calif. Dep’t of
 25 Corr. & Rehab.*, No. 2:06-CV-02696-MCE-GGH, 2007 WL 4249811, at *2 (E.D. Cal.
 26 Nov. 30, 2007). However, *Maldonado* is not applicable here because the present case
 27 before the Court only involved questions of federal law while it was open and was
 28 dismissed over twelve years ago. *See Doe v. Collectco, Inc.*, No. 2:06-CV-00244-JCM-

1 DJA, 2021 WL 3199210, at *1 (D. Nev. July 27, 2021) (applying Ninth Circuit rules, not
 2 California law, governing the use of fictitious names and sealing cases where the case has
 3 been closed for fifteen years and involved only questions of federal and Nevada law when
 4 active). The Court thus applies federal law to determine whether to grant Plaintiff's sealing
 5 applications.

6 **B. The Court Denies Plaintiff's Request to Seal the Entire Judicial Record**

7 Although Plaintiff requests the Court seal the entire judicial record in this case, the
 8 Court declines to do so. The docket entries in this case (ECF Nos. 1–10) do not contain
 9 confidential information or any personal information other than Plaintiff's name. Plaintiff
 10 has not alleged a sufficient compelling reason to seal the entire record, and there is a
 11 narrower remedy that will protect his interests in line with the aims of California's Safe at
 12 Home Program.

13 A party seeking to seal the entire judicial record bears the burden of overcoming the
 14 strong presumption of openness by meeting the "compelling reasons" standard. *Oliner v.*
 15 *Kontrabecki*, 745 F.3d 1024, 1026 (9th Cir. 2014). That is, the party must "articulate
 16 compelling reasons supported by specific factual findings that outweigh the general history
 17 of access and the public policies favoring disclosure, such as the public interest in
 18 understanding the judicial process." *Kamakana*, 447 F.3d at 1178–79 (internal citations
 19 and quotation marks omitted). What constitutes a "compelling reason" is "best left to the
 20 sound discretion of the trial court." *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting *Nixon*,
 21 435 U.S. at 599). The court must articulate a "factual basis" for granting a motion to seal
 22 and may not rely on "hypothesis or conjecture." *Kamakana*, 447 F.3d at 1178 (quoting
 23 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)).

24 In general, "'compelling reasons' sufficient to outweigh the public's interest in
 25 disclosure and justify sealing court records exist when such 'court files might have become
 26 a vehicle for improper purposes,' such as the use of records to gratify private spite, promote
 27 public scandal, circulate libelous statements, or release trade secrets." *Id.* at 1179 (citing
 28 *Nixon*, 435 U.S. at 598). "The mere fact that the production of records may lead to a

1 litigant's embarrassment, incrimination, or exposure to further litigation will not, without
 2 more, compel the court to seal its records." *Id.* (citing *Foltz*, 331 F.3d at 1136). While the
 3 Ninth Circuit has held that plaintiff's facing threats to their personal safety may provide
 4 reasons to seal the records, those threats must be related to the docket entries. *United States*
 5 *v. Doe*, 870 F.3d 991, 998–1001 (9th Cir. 2017). In *Doe*, a criminal defendant cooperated
 6 extensively with the Government, supplying information regarding a large drug cartel. The
 7 court analyzed the case using three factors: "(1) [sealing] serves a compelling interest;
 8 (2) there is a substantial probability that, in the absence of [sealing], this compelling
 9 interest would be harmed; and (3) there are no alternatives to [sealing] that would
 10 adequately protect the compelling interest." *Id.* at 998 (quoting *Oregonian Publ'g Co. v.*
 11 *U.S. Dist. Ct. for Dist. of Or.*, 920 F.2d 1462, 1466 (9th Cir. 1990)). Finding extreme risk
 12 to the defendant because of the wealth and size of the cartel, the importance of the ongoing
 13 investigation, and lack of adequate alternatives, the court granted the request to seal the
 14 records. *Id.*

15 Here, Plaintiff has not overcome the strong presumption of openness of court records
 16 to the public. While Plaintiff has alleged and shown proof of his involvement in the Safe
 17 at Home Program and alleged threats to his safety, sealing the entire record would be
 18 overbroad. The Safe at Home Program is only an address confidentiality program and does
 19 not protect all information regarding Plaintiff in the public sphere. Cal. Gov't Code §
 20 6205–11; *See Chaker v. L. Offs. of Winn & Sims*, No. 06-CV-00599-H-AJB, 2021 WL
 21 2529617 at *2 (S.D. Cal. June 21, 2021) (declining to seal the entire record based only on
 22 Plaintiff's participation in the Safe at Home program). Plaintiff's address does not appear
 23 in the record, other than a reference to his residing in San Diego County over 12 years ago.³
 24 There is no evidence that the threats Plaintiff allegedly received are at all related to the
 25 docket entries he seeks to seal. *See Doe*, 870 F.3d at 998. Therefore, under the *Doe* factors,
 26 the Court does not find that (1) sealing the entire record serves a compelling interest, (2) not

27
 28 ³ Plaintiff has filed a notice of change of address (ECF No. 15), but the Court will seal that
 document.

1 sealing the entire record would harm Plaintiff's interest protected by the Safe at Home
 2 Program, or (3) Plaintiff lacks any adequate alternative remedy to protect his interest.
 3 Indeed, Plaintiff has an adequate alternative remedy that will satisfy the goal of reducing
 4 his risk of harm: redacting his name from the record and sealing only the documents that
 5 contain sensitive information. *See Oregonian*, 920 F.2d at 1467. Thus, despite the possible
 6 threats of violence against his person from his involvement in a crime as an eyewitness,
 7 Plaintiff has not adequately tailored his request to seal the entire record with his need to
 8 avoid threats to his safety.

9 Because Plaintiff has not shown a compelling reason supported by specific facts that
 10 are narrowly tailored to his request to seal the entire docket, the Court denies the request.

11 **C. The Court Grants Plaintiff's Request to Redact and Replace His Name**

12 To the extent that Plaintiff asks the Court to redact and replace his name on the
 13 pleadings with the pseudonym "John Doe," the Court grants this request.

14 "The Ninth Circuit allows parties to use pseudonyms in unusual cases where
 15 anonymity is 'necessary . . . to protect a person from harassment, injury, ridicule or
 16 personal embarrassment.'" *Doe v. UNUM Life Ins. Co. of Am.*, 164 F. Supp. 3d 1140, 1144
 17 (N.D. Cal. 2016) (quoting *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1980)). To
 18 determine whether to allow a party to proceed anonymously, a district court must balance
 19 five factors: "(1) the severity of the threatened harm, (2) the reasonableness of the
 20 anonymous party's fears, . . . (3) the anonymous party's vulnerability to . . . retaliation,
 21 (4) the prejudice to the opposing party, and (5) the public interest." *Doe v. Kamehameha*
 22 *Sch./Bernice Pauahi Bishop Est.*, 596 F.3d 1036, 1042 (9th Cir. 2010). District courts
 23 place particular emphasis on the first and second factors. *Id.* at 1043.

24 Courts look at the context surrounding the threats to determine if a claimed fear is
 25 reasonable. *See Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life*
 26 *Activists*, 290 F.3d 1058, 1079–80 (9th Cir. 2002) (taking into account the context of
 27 random acts of violence by others when determining if plaintiff's fears were reasonable).
 28 The Ninth Circuit has recognized that threat of "physical harm presents the paradigmatic

1 case for allowing anonymity.” *Kamehameha*, 596 F.3d. at 1043. In *Advanced Textile*, the
 2 plaintiffs were threatened with retaliation, deportation, and imprisonment for suing their
 3 employers for unfair and discriminatory labor practices. *Advanced Textile*, 214 F.3d at
 4 1063. The Court found that the plaintiffs had a reasonable fear: the “plaintiffs [were] not
 5 required to prove that the defendants intend to carry out the threatened retaliation”; “[w]hat
 6 [was] relevant [was] that plaintiffs were threatened, and that a reasonable person would
 7 believe that the threat might actually be carried out.” *Id.* at 1071.

8 Here, Plaintiff has shown that he witnessed a violent crime and received threats to
 9 his personal safety, which led him to participate in the Safe at Home Program. As the
 10 Ninth Circuit instructs, Plaintiff does not need to prove that the threats will be carried out
 11 as long as he can show that a reasonable person would believe so. *Advanced Textile*, 214
 12 F.3d at 1071. Based on the nature of the threats he received, the Court finds that Plaintiff
 13 reasonably believes that he is in danger. Plaintiff has thus established that anonymity is
 14 “necessary . . . to protect [him] from harassment or injury.” *Doe*, 655 F.2d at 922 n.1.

15 Lastly, redacting Plaintiff’s name would not prejudice either party because the
 16 parties agreed to dismiss the action in 2009, Defendant is and always has been aware of
 17 Plaintiff’s identity, and Defendant has not opposed Plaintiff’s motion. *See Advanced*
 18 *Textile*, 214 F.3d at 1069 n.11 (finding that there was a decreased chance of prejudice to
 19 defendants because the identity of many of the plaintiffs had already been disclosed prior
 20 to the motion to proceed pseudonymously); *see also Roe v. United States*, No. 1:19-CV-
 21 00270-DAD-BAM, 2020 WL 869153, at *3 (E.D. Cal. Feb. 20, 2020) (finding no prejudice
 22 to defendants from allowing the plaintiffs to proceed under a pseudonym, where the
 23 defendants did not oppose the motion). Accordingly, the Court grants the request to redact
 24 and replace Plaintiff’s name in the record.

25 **D. The Court Grants Plaintiff’s Request to Seal the Instant Motion and the**
 26 **Supporting Documents**

27 Plaintiff requests to seal the instant motion and the related documents. (ECF Nos.
 28 11, 13, 14.) The “good cause” standard applies because these requests are, at best,

1 tangentially related to the merits of the case. *See Ctr. for Auto Safety*, 809 F.3d at 1102–
2 1103. To determine good cause, Court balances the right of the public and the rights of the
3 party to keep certain information private. *Foltz*, 331 F.3d at 1135. Here, the documents
4 Plaintiff requests to seal contain sensitive personal information, including his status as a
5 participant of the Safe at Home Program and his new address. The Court finds good cause
6 to maintain the requested documents under seal. Accordingly, the Court orders that the
7 instant motions and relevant documents (ECF No. 11–16) be kept under seal.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN PART**
10 Plaintiff's motion to seal the case records or redact Plaintiff's name. (ECF No. 12.) The
11 Court denies Plaintiff's request to seal the entire judicial record and grants the request to
12 redact and replace Plaintiff's name with the pseudonym, "John Doe," on the docket and in
13 all electronically available documents to conceal his true name. The Court **DENIES**
14 Plaintiff's motion for the Court to take judicial notice of other courts' orders and related
15 documents because the Court did not rely them. (ECF No. 16.) The Court **GRANTS**
16 Plaintiff's applications to maintain the motions and related documents under seal. (ECF
17 Nos. 11, 12, 13, 14.)

18
19 **IT IS SO ORDERED.**

20
21 **DATED: March 3, 2022**


22 **Hon. Cynthia Bashant**
23 **United States District Judge**

24
25
26
27
28